

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

OPERATING ENGINEERS LOCAL 139
HEALTH BENEFIT FUND, *et al.*,

Plaintiffs,

v.

Case No. 09-CV-105

LAMBERT CONSTRUCTION, LLC, and
KELLY LAMBERT,

Defendants.

JUDGMENT ORDER

This matter coming on to be heard upon the Motion of Plaintiffs, by their counsel, it appearing to the Court that the Defendants, LAMBERT CONSTRUCTION, LLC, a Wisconsin limited liability company, and KELLY LAMBERT, an individual, having been regularly served with process and having failed to appear, plead or otherwise defend, and default of said Defendants having been taken, the Court, first being fully advised in the premises and upon further evidence submitted herewith, FINDS:

1. It has jurisdiction of the subject matter herein and of the parties hereto.
2. Defendant, LAMBERT CONSTRUCTION, LLC, is bound by the terms of the collective bargaining agreement referred to in the Complaint of Plaintiffs.
3. Defendant, LAMBERT CONSTRUCTION, LLC, is obligated to make contributions to each of the Plaintiff Funds in accordance with collective bargaining agreement.

4. Defendant, LAMBERT CONSTRUCTION, LLC, is bound by all the terms and conditions set forth in the Agreements and Declarations of Trust governing the Plaintiff Funds.

5. Defendant, LAMBERT CONSTRUCTION, LLC, has made available to the Plaintiffs payroll books and records for the purpose of taking an account as to all employees of the Defendant covered by the collective bargaining agreement referred to in the Complaint of the Plaintiffs to determine amounts due to Plaintiffs.

6. On March 6, 2008, Plaintiffs, by Combined Crafts Statewide Audit Program, did cause an audit to be made to cover the period January 1, 2007 through January 31, 2008.

7. Upon such audit, it is determined that there remains due and owing from Defendant, LAMBERT CONSTRUCTION, LLC, for such audited period, to Plaintiffs, the amount of \$8,787.55 for contributions, \$7,837.60 for delinquent payment assessments, and \$3,352.11 for interest, for a total of \$19,977.26.

8. Plaintiffs are entitled to make a further audit of the payroll books and records of Defendant, LAMBERT CONSTRUCTION, LLC, to cover periods not previously audited by Plaintiffs.

9. Defendant, LAMBERT CONSTRUCTION, LLC, submitted monthly contribution reports to the Plaintiffs identifying employees of the Defendant who performed work covered by the collective bargaining agreement, and the number of

hours worked by or paid to those employees for the time period September 1, 2008 through October 31, 2008.

10. Upon such reports, it is determined that there is due and owing, for said contribution period, to Plaintiffs, the amount of \$31,618.66 for contributions, \$6,005.68 for delinquent payment assessments, and \$1,194.65 for interest, or a total of \$38,818.99.

11. Defendants also have failed and refused to submit all amounts due pursuant to the terms of a Promissory Note entered into by Defendants for the repayment of amounts due for April 1, 2007 through November 30, 2007. After application of four (4) installment payments, totaling \$13,254.77, Defendants, Lambert Construction, LLC, and Kelly Lambert, owe a balance of \$25,764.31 pursuant to the Promissory Note. Further, the Promissory Note provides that if Defendants defaulted on the Promissory Note, Defendant Kelly Lambert, individually, agreed to pay the remaining amounts due. Finally, Defendant Kelly Lambert also agreed to be liable for outstanding interest at the rate of 1 1/2% per month, and attorneys' fees, if the Defendants defaulted on the Promissory Note. Accordingly, Defendant owes interest of \$48.77 per month on the eight (8) unpaid installments, for a total of \$390.16.

12. Defendant, LAMBERT CONSTRUCTION, LLC, has failed to timely pay all contributions required to be made to the Plaintiff Funds. Accordingly, as provided

in the Agreements and Declarations of Trust governing the respective Funds, 29 U.S.C. §1132(g)(2) and 28 U.S.C. §1961, Plaintiffs are entitled to recover:

- (a) delinquent payment assessments and interest on all contributions paid late or remaining unpaid;
- (b) the cost of auditing the payroll books and records of Defendant;
- (c) the costs and expenses of the Trustees, including their reasonable attorneys' fees;
- (d) post-judgment interest; and
- (e) costs and attorneys' fees incurred in executing on, or otherwise collecting, this judgment.

13. Plaintiffs have incurred reasonable attorneys' fees totaling \$4,607.50.

14. There is no just cause for delay in the entry of judgment as to the sum of \$65,438.13 owed to the Plaintiffs from Defendant, LAMBERT CONSTRUCTION, LLC, and the sum of \$26,154.47 owed to the Plaintiffs from Defendant, KELLY LAMBERT.

IT IS THEREFORE ORDERED:

A. That Plaintiffs recover from the Defendant, LAMBERT CONSTRUCTION, LLC, the sum of \$40,586.59 for contributions, \$13,879.36 for delinquent payment assessments, and \$6,364.68 for interest, or a total sum of \$60,830.63.

B. That Plaintiffs recover from the Defendant, KELLY LAMBERT, the sum of \$26,154.47 for the remaining installment payments due pursuant to the terms of the Promissory Note, which includes interest at the rate of 1 1/2% per month.

C. That Plaintiffs recover from the Defendant, LAMBERT CONSTRUCTION, LLC, the costs of these proceedings to include the sum of \$4,607.50 as and for Plaintiffs' just and reasonable attorneys' fees.

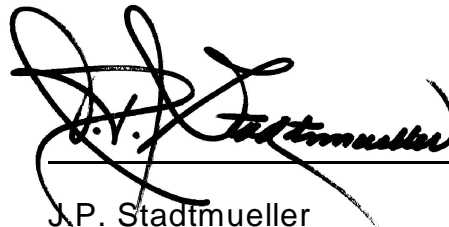
D. That Plaintiffs recover from the Defendant, LAMBERT CONSTRUCTION, LLC, the total sum of **\$65,438.13**, plus post-judgment interest on said amount at the rate required by 28 U.S.C. §1961, and from Defendant, KELLY LAMBERT, the total sum of **\$26,154.47**.

E. Plaintiffs are awarded execution for the collection of the judgments and costs granted hereunder.

F. The Court hereby retains jurisdiction of this cause and all of the parties hereto for the purpose of enforcing this Order.

Dated at Milwaukee, Wisconsin, this 22nd day of May, 2009.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J.P. Stadtmueller", is written over a horizontal line.

J.P. Stadtmueller
U.S. District Judge

Judgment entered this 22nd day of May, 2009.

JON W. SANFILIPPO
Clerk of Court

By: s/ Nancy A. Monzingo
Deputy Clerk